



DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2022-0105]

General Qualifications of Drivers: Small Business in Transportation Coalition; Application for Exemption

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition; denial of application for exemption.

SUMMARY: FMCSA announces its decision to deny the Small Business in Transportation Coalition's (SBTC) request for an exemption from the requirement that motor carriers not permit a person to drive a commercial motor vehicle (CMV) unless the driver is capable of reading and speaking the English language sufficiently to communicate with the public, to understand highway traffic signs and signals in the English language, to respond to official inquiries, and to make entries on reports and records drivers. SBTC requests the exemption on behalf of all motor carriers in North American Industry Classification System (NAICS) category 484230 (Specialized Freight (except Used Goods) Trucking, Long-Distance) with revenues under \$30 million. FMCSA analyzed the exemption application and public comments, and determined that the application lacked evidence that would ensure an equivalent level of safety or greater would be achieved absent such exemption.

FOR FURTHER INFORMATION CONTACT: Ms. Pearlie Robinson, Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards, FMCSA; (202) 366-4225; pearlie.robinson@dot.gov. If you have questions on viewing or submitting material to the docket, contact Dockets Operations at (202) 366-9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

Viewing Comments and Documents

To view comments, go to www.regulations.gov, insert the docket number (“FMCSA-2022-0105”) in the “Keyword” box, and click “Search.” Next, sort the results by “Posted (Newer-Older),” choose the first notice listed, click “Browse Comments.”

To view documents mentioned in this notice as being available in the docket, go to www.regulations.gov, insert the docket number (“FMCSA-2022-0105”) in the “Keyword” box, click “Search,” and choose the document to review.

If you do not have access to the internet, you may view the docket online by visiting Dockets Operations in Room W12-140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue, SE, Washington, DC 20590, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366-9317 or (202) 366-9826 before visiting Dockets Operations.

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315(b) to grant exemptions from Federal Motor Carrier Safety Regulations (FMCSRs). FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The Agency must publish its decision in the **Federal Register** (49 CFR 381.315(b)) with the reasons for denying or granting the application and, if granted, the name of the person or class of persons receiving the exemption and the regulatory provision from which the exemption is granted. The notice must specify the effective

period and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

III. Background

Current Regulation Requirements

The regulations regarding qualifications of drivers in 49 CFR 391.11(a) prohibit a person from driving, and a motor carrier from requiring or permitting a person to drive, a CMV if the person is not qualified to do so. Under 49 CFR 391.11(b)(2) a person is qualified to drive a CMV if they can read and speak the English language sufficiently to converse with the general public, to understand highway traffic signs and signals in the English language, to respond to official inquiries, and to make entries on reports and records.

IV. Applicant's Request

SBTC seeks an exemption from "49 CFR 391.11(a) as it applies to 49 CFR 391.11(b)(2)" on behalf of "all motor carriers in NAICS category 484230 (Specialized Freight (except Used Goods) Trucking, Long-Distance) with revenues under \$30 million, which are defined as 'small businesses' by the Small Business Administration." SBTC wrote that as long as FMCSA does not require states to test for language proficiency, "it is inappropriate to enforce this rule against motor carriers, especially those small entities beyond one man owner operators employing drivers that do not have in-house compliance departments able to conduct their own state level-like testing for English proficiency." SBTC suggests that a motor carrier should be able to assert it is in compliance with 49 CFR §§ 391.11(a) and 391.11(b)(2) the moment it verifies that a prospective driver has a state-issued commercial driver's license.

V. Equivalent Level of Safety

In its exemption application, SBTC stated: "By temporarily placing the onus for compliance with the English proficiency standard solely on drivers and not motor carriers

until such time as the FMCSA decides whether to shift responsibility for same to the states, we believe a level of safety that is equivalent to the level of safety that would be obtained by complying with the regulation will be achieved.”

VI. Public Comments

On June 15, 2022, FMCSA published notice of this application and requested public comments (87 FR 36200). The Agency received 10 comments from the public, with three comments from the applicant and seven from individuals opposing the proposed exemption.

Mr. Jimmy Walker wrote, “Allowing this proposal to be accepted only makes roads and traffic more unsafe. It appears that [SBTC] is truly NOT interested in the public's safety, but is only interested in profits at the expense of more loss of life and property to others and the public.” Mr. James Lamb responded to Mr. Walker’s comments and noted that FMCSA failed to immediately post SBTC’s exemption application. Mr. Lamb clarified that SBTC’s position “is about bringing attention and awareness to the fact that FMCSA has failed for 20 years to follow the USDOT Inspector General's recommendation that FMCSA should require states verify drivers' English proficiency rather than place the onus on carriers. . . .”

Mr. Michael Milliard wrote, “I support the SBTC's request to better our highways by reducing the number of non-English speaking drivers. I don't support the SBTC's request to except the drivers of small businesses from the English-speaking requirement.” Mr. Carl Huddleston and Danko and Son’s, Inc., commented that the exemption should not be granted because drivers who cannot read and speak English pose a danger to the public. Mr. Ricky Phillip added that a driver “would be forced to use some sort of electronic device to translate directions which could cause distracted driving to increase” and would not be able to read road signs. Finally, Ms. Tamra Howell commented that the

exemption would diminish the effectiveness of other programs such as FMCSA's Compliance, Safety, Accountability program and the Drug and Alcohol Clearinghouse.

VII. FMCSA Safety Analysis and Decision

FMCSA evaluated SBTC's application and the public comments. In response to the comment that SBTC's application was not immediately posted to the docket, the Agency acknowledges that SBTC's application was posted to the public docket the day after the Federal Register notice published. FMCSA continued to monitor the public docket for comments filed after the comment closing date. FMCSA notes in response to SBTC's comment about the Department of Transportation's Office of Inspector General's May 8, 2002, report titled "Improving Testing and Licensing of Commercial Drivers," that the report does not support SBTC's exemption application. The report did not recommend that motor carriers should be exempt from the driver qualification regulations relating to the English language proficiency requirement.

Although SBTC made a conclusory statement that "placing the onus for compliance with the English proficiency standard solely on drivers and not motor carriers" would achieve an equivalent level of safety as complying with the regulations, SBTC did not explain how this would achieve an equivalent level of safety and did not propose any safety countermeasures. FMCSA concludes that SBTC has presented insufficient evidence to establish that not complying with the driver qualification regulations relating to the English language proficiency requirements for CMV drivers would meet or exceed the level of safety provided by complying with the regulations.

For the above reasons, FMCSA denies SBTC's request for exemption.

Robin Hutcheson,
Deputy Administrator.